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S.O., Appellant)	
)	
and)	Docket No. 21-0526
)	Issued: September 3, 2021
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U.S. POSTAL SERVICE, POST OFFICE,)	
Washington, DC, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On February 19, 2021 appellant filed a timely appeal from a February 11, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 20, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

The issue is whether OWCP properly determined that appellant abandoned his request for an oral hearing.

On August 23, 2019 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2019 he injured his feet, ankle, knees, and back when he fell through a drain cover on his route while in the performance of duty. He did not stop work.

Appellant sought treatment at an urgent care facility on August 20, 2019 and was treated by Dr. Britanne J. Doss, a family practitioner, who noted a history of injury that on that date he

stepped on a drain and fell with low back and right foot pain. Dr. Doss diagnosed strain of muscle, fascia and, tendon of the lower back, initial industrial accident on August 20, 2019. She also diagnosed unspecified sprain of the right foot, initial encounter. Dr. Doss advised that appellant could work with restrictions as of the date of her examination and she anticipated his release to full-duty work on August 30, 2019. In an August 28, 2019 report, she reiterated appellant's history of injury and lower back and right foot diagnoses, and provided an opinion regarding his work capacity.

In an August 28, 2019 report, Dr. Billie R. Downing, a family practitioner, noted a history of injury that on August 20, 2019 appellant stepped on a drain and fell experiencing low back and right foot pain. She examined him and diagnosed lower back injury/sprain. Dr. Downing advised that appellant could continue performing light-duty work.

A September 24, 2019 duty status report (Form CA-17) by a provider with an illegible signature indicated that on August 20, 2019 appellant fell in a drain hole and injured his feet, ankle, knees, hand, and back. The report provided a diagnosis of muscle spasm and paresthesia due to injury. The report also diagnosed ankle pain. Additionally, the report indicated that appellant was unable to perform his regular work.

On November 4, 2019 appellant filed a claim for compensation (Form CA-7) for disability, during the period October 7 through November 1, 2019, for leave without pay.

OWCP, in a November 8, 2019 development letter, informed appellant that, when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and; therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. It explained, however, that it had reopened the claim for formal consideration of the merits because it received a claim for wage-loss compensation. OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond. No additional evidence was received.

By decision dated December 20, 2019, OWCP denied appellant's traumatic injury claim, finding that the factual component of fact of injury had not been established. It noted that he had not responded to its November 8, 2019 development letter requesting specific factual information regarding the claimed injury. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 16, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 6, 2020 letter, OWCP's hearing representative informed appellant that an oral hearing would take place on May 13, 2020 at 1:00 p.m., Eastern Standard Time (EST). The hearing representative provided a toll-free number and a passcode to access the hearing by telephone. The hearing representative requested that appellant dial the toll-free number "a few minutes" before the commencement of the scheduled hearing. The letter was mailed to appellant's last known address of record.

By decision dated February 11, 2021, OWCP found that appellant had abandoned his request for an oral hearing. It indicated that he had received a 30-day advance notice of the hearing scheduled for May 13, 2020 and that he had failed to appear for the oral hearing. OWCP further noted that there was no indication in the record that appellant had contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.² OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.³

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.⁴ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁵

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

Following OWCP's December 20, 2019 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an April 6, 2020 letter, a hearing representative notified him that a telephonic hearing to be held on May 13, 2020 at 1:00 p.m., EST. had been scheduled. The hearing notice was properly addressed to appellant's last known address of record.⁶ Appellant did not call-in as instructed for the May 13,

¹ 20 C.F.R. § 10.616(a).

² *Id.* at § 10.617(b).

³ A.R., Docket No. 19-1691 (issued February 24, 2020); M.R., Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463(1991).

⁴ *Supra* note 1 at § 10.622(f).

⁵ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also* E.M., Docket No. 20-0837 (issued January 27, 2021); A.J., Docket No. 18-0830 (issued January 10, 2019).

⁶ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See* C.Y., Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's April 6, 2020 hearing notice such that the presumption of receipt would be rebutted.

2020 telephonic hearing and there is no indication that he requested postponement of the telephonic hearing. Moreover, he did not submit a written request within the 10 days after the date set for the telephonic hearing and request that another telephonic hearing be scheduled.⁷ Accordingly, the Board finds that OWCP's hearing representative properly found that appellant abandoned his telephonic hearing request.⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁷ A.C., Docket No. 20-1510 (issued April 23, 2021); E.S., Docket No. 19-0567 (issued August 5, 2019).

⁸ *Id.*; A.J., *supra* note 5.